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OFFICE OF PETITIONS

In re Application of
Andrew Bartlett et al.
Application No. 10/700,005
Filed: November 3, 2003
Attorney Docket No. MCA-460 D PC/US

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: DECISION DISMISSING
: PETITION
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This is a decision on the petition filed October 28, 2004, in response to the Notice of Omitted Items mailed October 6, 2004, requesting that Figure 10 be accepted as having been filed with the original application. The petition is being treated under 37 CFR 1.182.

On November 3, 2003 the application was filed.

On October 6, 2004, the Office of Initial Patent Examination (OIPE) mailed a Notice of Omitted Items in a Nonprovisional Application stating that the application had been accorded a filing date of November 3, 2003, but Figure 10 described in the specification appeared to have been omitted from the application.

In response, on October 28, 2004, the present petition was filed. Petitioners argue a complete application was present on November 3, 2003 and point to the application transmittal letter as evidence that Figure 10 was among the papers filed upon application. Petitioners request that the application be accorded a filing date of November 3, 2003, with Figure 10 as a part of the original disclosure.

The argument and evidence supplied with the petition have been carefully considered, but are not persuasive. The USPTO has a well-established and well-publicized practice of providing a receipt for papers filed in the USPTO to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See section 503, Manual of Patent Examining Procedure (MPEP 503).

Unfortunately, the application transmittal letter is, at best, only evidence of what was intended to be filed, not evidence of what was actually received or filed in the USPTO.

The petition is DISMISSED.

The copy of Figure 10 supplied with the present petition will not be used for processing or examination, but will be retained in the application file. Petitioner may file Figure 10 as a preliminary amendment. If Figure 10 is filed as a preliminary amendment, the amendment will be reviewed for new matter.

As the evidence presented is not sufficient to prove that Figure 10 was filed with the application when filed, the evidence is insufficient to show that the error was committed by the USPTO and thus, the petition fee will not be refunded.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of November 3, 2003, using only the application papers filed on that date and not the copy of Figure 10 submitted with the petition.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in cursive script, reading "Patricia Faison-Ball".

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions